

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

EVERBRITE, INC.,

Defendant.

Filed: 9/23/97

Case No: 97-CR178

Violations: 15 U.S.C. § 1

Judge Clevert

INFORMATION

The United States of America, acting through its attorneys, charges:

COUNT ONE: SHERMAN ACT

I.

DESCRIPTION OF THE OFFENSE

1. EVERBRITE, INC. is made a defendant on the charge stated below.
2. Beginning at least as early as the mid-1980's, and continuing until or about January 1996, the exact dates being unknown to the United States, the defendant and others entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices, rigging bids, and allocating contracts for the sale of point-of-purchase displays to Miller Brewing Company. The combination and conspiracy, engaged in by the defendant and co-conspirators, is an unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were:

- (a) to agree to fix prices on the submission of bids for contracts for the sale of point-of-purchase displays to Miller Brewing Company;
- (b) to agree to submit collusive and rigged bids for contracts to sell point-of-purchase displays to Miller Brewing Company; and
- (c) to allocate contracts for the sale of point-of-purchase displays to Miller Brewing Company among and between the conspirators.

II.

MEANS AND METHODS OF THE CONSPIRACY

4. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

- (a) participating in telephone and in-person conversations to discuss the prices to bid on contracts for the sale of point-of-purchase displays to be awarded by Miller Brewing Company;
- (b) agreeing, during those conversations, to fix prices on the submission of bids on those contracts for the sale of point-of-purchase displays to be awarded by Miller Brewing Company;
- (c) agreeing, during those conversations, to submit collusive, rigged bids on those contracts for the sale of point-of-purchase displays to be awarded by Miller Brewing Company;

- (d) agreeing, during those conversations, to allocate those contracts for the sale of point-of-purchase displays to be awarded by Miller Brewing Company among and between the conspirators;
- (e) submitting collusive and rigged bids on those contracts for the sale of point-of-purchase displays to be awarded by Miller Brewing Company;
- (f) receiving the contracts and purchase orders to supply Miller Brewing Company with the point-of-purchase displays;
- (g) providing point-of-purchase displays to Miller Brewing Company on contracts awarded on the basis of collusive and rigged bids;
- (h) receiving payment from Miller Brewing Company on contracts awarded on the basis of collusive and rigged bids;
- (i) concealing the conspiracy and conspiratorial contacts through various means;
- (j) agreeing to continue fixing prices, rigging bids, and allocating contracts from year to year; and
- (k) attempting to recruit other participants into the conspiracy.

III.

DEFENDANT AND CO-CONSPIRATORS

5. During the period covered by this Count, defendant EVERBRITE, INC. ("EVERBRITE"), a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Milwaukee, Wisconsin, was involved in the sale of point-of-purchase displays in the United States. During the period covered by this Count, EVERBRITE was engaged in the business of

developing, producing, selling, and distributing point-of-purchase displays to Miller Brewing Company.

6. Various corporations and individuals, including Zelman Levine, Richard Machas, Schutz International, Inc., and Jon S. Wamser, not made defendants in this Count, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

7. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

IV.

TRADE AND COMMERCE

8. Point-of-purchase displays include plastic or neon bar taps, clocks, lights, lamps, signs, or other miscellaneous promotional items that contain the brand name or logo of the product to be sold. Point-of-purchase displays are placed by breweries in bars, restaurants, and stores to advertise their products to the consumer.

9. During the period covered by this Count, Miller Brewing Company purchased substantial quantities of permanent point-of-purchase displays from suppliers located throughout the United States, including from EVERBRITE and other corporate conspirators. These purchases were often made by issuing a contract or purchase order to a supplier after the supplier had submitted a written

price quotation or bid pursuant to the Miller Brewing Company's practice of seeking competitive bids for sizable contracts.

10. During the period covered by this Count, the defendant and co-conspirators obtained a substantial number of contracts and purchase orders for point-of-purchase displays from Miller Brewing Company through the submission of collusive, rigged bids.

11. During the period covered by this Count, the defendant and co-conspirators sold and distributed point-of-purchase displays in a continuous and uninterrupted flow of interstate commerce to Miller Brewing Company which is located in a state other than the states in which certain co-conspirators developed and produced point-of-purchase displays.

12. During the period covered by this Count, EVERBRITE developed, produced, sold, and distributed point-of-purchase displays in Wisconsin and other states using materials and supplies obtained in interstate commerce and distributed certain point-of-purchase displays at the direction of Miller Brewing Company to states other than Wisconsin.

13. During the period covered by this Count, the activities of the defendant and co-conspirators with respect to the sale of point-of-purchase displays to Miller Brewing Company were within the flow of, and substantially affected, interstate trade and commerce.

V.

JURISDICTION AND VENUE

14. The combination and conspiracy charged in Count One of this Information was formed and carried out, in part, in the Eastern District of Wisconsin within the five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

COUNT TWO: SHERMAN ACT

I.

DESCRIPTION OF THE OFFENSE

1. EVERBRITE, INC. is hereby made a defendant on the charge stated below.

2. Paragraphs 7 and 8 of Count One of this Information are hereby repeated, realleged, and incorporated in Count Two of this Information.

3. Beginning at least as early as the mid-1980's, and continuing until or about January 1996, the exact dates being unknown to the United States, the defendant and others entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices, rigging bids, and allocating contracts for the sale of point-of-purchase displays to Anheuser-Busch, Inc. The combination and conspiracy, engaged in by the defendant and co-conspirators, is an unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

4. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were:

- (a) to agree to fix prices on the submission of bids for contracts for the sale of point-of-purchase displays to Anheuser-Busch, Inc.;
- (b) to agree to submit collusive and rigged bids for contracts to sell point-of-purchase displays to Anheuser-Busch, Inc.; and
- (c) to allocate contracts for the sale of point-of-purchase displays to Anheuser-Busch, Inc. among and between the conspirators.

II.

MEANS AND METHODS OF THE CONSPIRACY

5. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

- (a) participating in conversations to discuss the prices to bid on contracts for the sale of point-of-purchase displays to be awarded by Anheuser-Busch, Inc.;
- (b) agreeing, during those conversations, to fix prices on the submission of bids on those contracts for the sale of point-of-purchase displays to be awarded by Anheuser-Busch, Inc.;

- (c) agreeing, during those conversations, to submit collusive, rigged bids on those contracts for the sale of point-of-purchase displays to be awarded by Anheuser-Busch, Inc.;
- (d) agreeing, during those conversations, to allocate those contracts for the sale of point-of-purchase displays to be awarded by Anheuser-Busch, Inc. among and between the conspirators;
- (e) submitting collusive and rigged bids on those contracts for the sale of point-of-purchase displays to be awarded by Anheuser-Busch, Inc.;
- (f) receiving the contracts and purchase orders to supply Anheuser-Busch, Inc. with the point-of-purchase displays;
- (g) providing point-of-purchase displays to Anheuser-Busch, Inc. on contracts awarded on the basis of collusive and rigged bids;
- (h) receiving payment from Anheuser-Busch, Inc. on contracts awarded on the basis of collusive and rigged bids;
- (i) concealing the conspiracy and conspiratorial contacts through various means; and
- (j) agreeing to continue fixing prices, rigging bids, and allocating contracts from year to year.

III.

DEFENDANT AND CO-CONSPIRATORS

6. During the period covered by this Count, defendant EVERBRITE, INC. ("EVERBRITE"), a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Milwaukee, Wisconsin, was

involved in the sale of point-of-purchase displays in the United States. During the period covered by this Count, EVERBRITE was engaged in the business of developing, producing, selling, and distributing point-of-purchase displays to Anheuser-Busch, Inc.

7. Various corporations and individuals, including Zelman Levine and Henry C. Zeni, not made defendants in this Count, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

IV.

TRADE AND COMMERCE

8. During the period covered by this Count, Anheuser-Busch, Inc. purchased substantial quantities of permanent point-of-purchase display materials from suppliers located throughout the United States, including from EVERBRITE and other co-conspirators. These purchases were often made by issuing a contract or purchase order to a conspirator after the conspirator had submitted a written price quotation or bid pursuant to the Anheuser-Busch, Inc.'s practice of seeking competitive bids for sizable contracts.

9. During the period covered by this Count, the defendant and co-conspirators obtained a substantial number of contracts and purchase orders for point-of-purchase displays from Anheuser-Busch, Inc. through the submission of collusive, rigged bids.

10. During the period covered by this Count, the defendant and

co-conspirators sold and distributed point-of-purchase displays in a continuous and uninterrupted flow of interstate commerce to Anheuser-Busch, Inc. which is located in a state other than the states in which EVERBRITE and its co-conspirators developed and produced point-of-purchase displays.

11. During the period covered by this Count, EVERBRITE developed, produced, sold, and distributed point-of-purchase displays in Wisconsin and other states using materials and supplies obtained in interstate commerce and distributed point-of-purchase displays at the direction of Anheuser-Busch, Inc. to states other than Wisconsin.

12. During the period covered by this Count, the activities of the defendant and co-conspirators with respect to the sale of point-of-purchase displays to Anheuser-Busch, Inc. were within the flow of, and substantially affected, interstate trade and commerce.

V.

JURISDICTION AND VENUE

13. The combination and conspiracy charged in Count Two of this Information was formed and carried out, in part, in the Eastern District of Wisconsin within the five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

_____/s/_____
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